

Henry Moomau has entered into a Voluntary Remediation Agreement (hereinafter referred to as "the Agreement") with the Department of Environmental Protection for the State of West Virginia pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, located at 444 Virginia Avenue, Petersburg, in Milroy District, Grant County, West Virginia and more particularly described in deeds of record in the office of the Clerk of the County Commission of Grant County, West Virginia, Deed Book 109, Page 390 and Deed Book 112 Page 245. Paragraph 75 of the Agreement requires Henry Moomau, as the owner of said property, to file a Land Use Covenant with the Clerk of the Grant County Commission. The Agreement allows certain levels of contamination to remain on the property and requires a land use covenant be recorded in the office of the Clerk of the Grant County Commission for the purposes of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement.

**NOW THEREFORE**, as Henry Moomau, hereinafter referred to as "Owner," and the Secretary have provided in the Agreement, the following restrictions shall apply to this property:

1. The Owner shall prohibit all activities on the property which may interfere with the remedial action required by the Agreement.
2. The Owner shall prohibit all activities that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action.
3. The Owner shall restrict the uses of the property to: Non – residential use only.
4. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to transfer any interest in the property.

5. The Owner shall not convey any title, easement, or other interest in the property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of paragraph 2, above.

6. The Owner shall grant the West Virginia Department of Environmental Protection and its designated representatives the right to enter the property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

7. The Department of Environmental Protection may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

8. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code §22-22-15 and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner any person identified in W. Va. Code §22-22-18 from all civil liability to the state as provided under the Act so long as the property complies with the applicable standards identified in the Agreement.

9. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, successors or assigns and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the Secretary and the owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of the county where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

10. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

11. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the West Virginia Department of Environmental Protection, or his successor in accordance with regulations promulgated by the Secretary or his successor. Within 5 days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the Grant County Commission, and within 5 days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the Department of Environmental Protection.

IN WITNESS WHEREOF, the said Owner of the above described property and the Secretary of the Department of Environmental Protection have caused this Land Use Covenant to be executed this 28<sup>th</sup> day of March, 2006

SIGNED:

Henry F. Moos  
Property Owner  
Protection

Ken Ellison, Director  
Secretary, Department of Environmental

I, Catherine H. Custer, a Notary Public in and for the State and County aforesaid, do hereby certify that Henry F. Moos whose name is signed to the writing above, bearing date the 29<sup>th</sup> day of March, 2006 has this day acknowledged same to be his true act and deed.



Given under my hand this the 29<sup>th</sup> day of March, 2006  
My commission expires February 1, 2008

Catherine H. Custer  
Notary Public

I, Rhonda F. McGlothlin, Notary Public in and for the State and County aforesaid, do hereby certify that Ken Ellison, whose name is signed to the writing above, bearing date the 26<sup>th</sup> day of April, 2006 has this day acknowledged same to be his true act and deed.

Given under my hand this the 26<sup>th</sup> day of April, 2006  
My commission expires April 26, 2010

Notary Public  
Rhonda F. McGlothlin

This recorded document is to be returned to:

Mr. Ken Ellison, Director  
WVDEP, DLR  
601 57<sup>th</sup> Street  
Charleston, WV 25304



GRANT COUNTY, WV  
FILED  
May 15, 2006 15:46:56

HAROLD G. HISER  
COUNTY CLERK  
TRANSACTION NO: 2006002399

DEED BOOK  
Book: 00231 Page: 00439  
Line: 00001

